

SECOND REGULAR SESSION

# SENATE BILL NO. 500

97TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR KEAVENY.

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Pre-filed December 1, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To amend chapters 456 and 474, RSMo, by adding thereto two new sections relating to no-contest clauses.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

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Section A. Chapters 456 and 474, RSMo, are amended by adding thereto  
2 two new sections, to be known as sections 456.4-420 and 474.395, to read as  
3 follows:

**456.4-420. 1. If a trust instrument containing a no-contest clause**  
2 **is or has become irrevocable, an interested person may file a petition**  
3 **to the court for an interlocutory determination whether a particular**  
4 **motion, petition, or other claim for relief by the interested person**  
5 **would trigger application of the no-contest clause or would otherwise**  
6 **trigger a forfeiture that is enforceable under applicable law and public**  
7 **policy.**

8 **2. The petition described in subsection 1 of this section shall be**  
9 **verified under oath. The petition may be filed by an interested person**  
10 **either as a separate judicial proceeding, or brought with other claims**  
11 **for relief in a single judicial proceeding, all in the manner prescribed**  
12 **generally for such proceedings under this chapter. If a petition is**  
13 **joined with other claims for relief, the court shall enter its order or**  
14 **judgment on the petition before proceeding any further with any other**  
15 **claim for relief joined therein. In ruling on such a petition, the court**  
16 **shall consider the text of the clause, the context to the terms of the**  
17 **trust instrument as a whole, and in the context of the verified factual**  
18 **allegations in the petition. No evidence beyond the pleadings and the**  
19 **trust instrument shall be taken except as required to resolve an**  
20 **ambiguity in the no-contest clause.**

21           3. An order or judgment determining a petition described in  
22 subsection 1 of this section shall have the effect set forth in subsections  
23 4 and 5 of this section, and shall be subject to appeal as with other final  
24 judgments. If the order disposes of fewer than all claims for relief in  
25 a judicial proceeding, that order is subject to interlocutory appeal in  
26 accordance with the applicable rules for taking such an appeal. If an  
27 interlocutory appeal is taken, the court may stay the pending judicial  
28 proceeding until final disposition of said appeal on such terms and  
29 conditions as the court deems reasonable and proper under the  
30 circumstances. A final ruling on the applicability of a no-contest clause  
31 shall not preclude any later filing and adjudication of other claims  
32 related to the trust.

33           4. An order or judgment, in whole or in part, on a petition  
34 described in subsection 1 of this section shall result in the no-contest  
35 clause being enforceable to the extent of the court's ruling, and shall  
36 govern application of the no-contest clause to the extent that the  
37 interested person then proceeds forward with the claims described  
38 therein. In the event such an interlocutory order or judgment is  
39 vacated, reversed, or otherwise modified on appeal, no interested  
40 person shall be prejudiced by any reliance, through action, inaction or  
41 otherwise, on the order or judgment prior to final disposition of the  
42 appeal.

43           5. An order or judgment shall have effect only as to the specific  
44 trust terms and factual basis recited in the petition. If claims are later  
45 filed that are materially different than those upon which the order or  
46 judgment is based, then to the extent such new claims are raised, the  
47 party in whose favor the order or judgment was entered shall have no  
48 protection from enforcement of the no-contest clause otherwise  
49 afforded by the order and judgment entered under this section.

50           6. For purposes of this section, a "no-contest clause" shall mean  
51 a provision in a trust instrument purporting to rescind a donative  
52 transfer to, or a fiduciary appointment of, any person, or that otherwise  
53 effects a forfeiture of some or all of an interested person's beneficial  
54 interest in a trust estate as a result of some action taken by the  
55 beneficiary. This definition shall not be construed in any way as  
56 determining whether a no-contest clause is enforceable under  
57 applicable law and public policy in a particular factual situation. As

58 used in this section, the term "no-contest clause" shall also mean an "in  
59 terrorem clause".

60 7. A no-contest clause is not enforceable against an interested  
61 person in, but not limited to, the following circumstances:

62 (1) Filing a motion, petition, or other claim for relief objecting  
63 to the jurisdiction or venue of the court over a proceeding concerning  
64 a trust, or over any person joined, or attempted to be joined, in such a  
65 proceeding;

66 (2) Filing a motion, petition, or other claim for relief concerning  
67 an accounting, report, or notice that has or should have been made by  
68 a trustee, provided the interested person otherwise has standing to do  
69 so under applicable law, including, but not limited to, section 456.6-603;

70 (3) Filing a motion, petition, or other claim for relief under  
71 chapter 475 concerning the appointment of a guardian or conservator  
72 for the settlor;

73 (4) Filing a motion, petition, or other claim for relief under  
74 chapter 404 concerning the settlor;

75 (5) Disclosure to any person of information concerning a trust  
76 instrument or that is relevant to a proceeding before the court  
77 concerning the trust instrument or property of the trust estate, unless  
78 such disclosure is otherwise prohibited by law;

79 (6) Filing a motion, pleading, or other claim for relief seeking  
80 approval of a nonjudicial settlement agreement concerning a trust  
81 instrument, as set forth in section 456.1-111;

82 (7) To the extent a petition under subsection 1 of this section is  
83 limited to the procedure and purpose described therein.

84 8. In any proceeding brought under this section, the court may  
85 award costs, expenses, and attorneys' fees to any party, as provided in  
86 section 456.10-1004.

474.395. 1. If a will contains a no-contest clause, an interested  
2 person may file a petition with the court for a determination whether  
3 a particular motion, petition, action, or other claim for relief by the  
4 interested person would trigger application of the no-contest clause or  
5 would otherwise trigger a forfeiture that is enforceable under  
6 applicable law and public policy, which application would be  
7 adjudicated in the manner prescribed in section 456.4-420, and subject  
8 to the provisions set forth therein.

9           2. For purposes of this section, a "no-contest clause" shall mean  
10 a provision in a will purporting to rescind a donative transfer to, or a  
11 fiduciary appointment of, any person who institutes a proceeding  
12 challenging the validity of all or part of the will, or that otherwise  
13 effects a forfeiture of some or all of an interested person's beneficial  
14 interest in the estate as a result of some action taken by the  
15 beneficiary. This definition shall not be construed in any way as  
16 determining whether a no-contest clause is enforceable under  
17 applicable law and public policy in a particular factual situation. As  
18 used in this section, the term no-contest clause shall also mean an "in  
19 terrorem clause".

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Bill

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